



2nd Appeal Brief, GAU 3618, Ser. No. 09/995,097

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: **Gerald Klebe**

Appellant: **Nick Bromer**

5 GAU: **3618** Title: **DORSIFLEXION SKATE BRAKE**

Serial No.: **09/995,097**

Filed: **Nov. 27, 2001**

10 This paper: **March 25, 2003**

**TABLE OF AUTHORITIES AND  
EXPLANATION OF RELEVANCE**

15 Commissioner for Patents  
Washington, D.C. 20231  
Sir:

The Appellant submits as an attachment to the Brief the following authorities:

- 20 (1) Model demonstrated at the interview of May 15, 2002; and  
(2) Affidavit of September 23, 2002 (actually a declaration).

The model and affidavit are relevant to the issues for the following reason, that was set out in the original Brief that was held to be non-compliant:

25 The Examiner and SPE Brian Johnson questioned the Appellant's statement at the interview of May 15, 2002, that the Model he demonstrated was constructed prior to the application filing date. Because of their apparent doubt, the Appellant submitted the Affidavit of September 23, 2002.

However, in the Advisory Action of October 7, 2002, the Examiner wrote that "the model presented at the interview clearly showed features not in the application originally filed." What these features are was not explained.

5 The Appellant has signed an affidavit, and there is no evidence against its assertions anywhere in the record. If the PTO is to take the position that the Model is a fake and the Affidavit is a fraud, then it should do so on the record; and if is not to take that position, it must accept the Model in support of the application, as required by the MPEP because all the evidence shows that the Model was made prior to filing and therefore is relevant to the rejection.

10 With respect, in the rejection the Examiner did not consider one of the eight factors to be weighed (MPEP § 2164.01(a)), namely, the existence of a working example. A working Model, constructed prior to filing, was demonstrated at the interview, but the Advisory Action of October 7, 2002, shows it is not considered (MPEP § 2164.02). The Affidavit of September 23, 2002, supports the Model; if the Affidavit is not given weight, the PTO must explain "why it 15 doubts the truth or accuracy of any statement in a supporting disclosure" (MPEP § 2164.04, emphasis in original).

Respectfully submitted,

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**SUBMISSION OF APPEAL BRIEF AND TABLE OF AUTHORITIES**

Commissioner for Patents

Washington, D.C. 20231

Sir:

Attached in triplicate are an amended Appeal Brief and a Table of Authorities listing items that the Examiner refused to enter in the Notification of Non-Compliance mailed on February 25, 2003. The Appellant has petitioned the Director for inclusion of these items in the Brief. The Table of Authorities is submitted as an attachment to the Brief because the Examiner asserted that the authorities were "out of permitted order" (line 7, page 2, Notification of February 25).

Claim 17 in the appendix does not include the amendments of September 25, 2002.

Respectfully submitted,

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*I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, DC 20231 on March 25, 2003.*

*Nick Bromer*